

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5972 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No

DIPAK CHANDULAL SHAH

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner
MR. CC BHALJA ASSISTANT GOVERNMENT PLEADER
for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 11/02/99

ORAL JUDGEMENT

The grievance of the petitioner in this writ petition under Article 226 of the Constitution of India is that the impugned order of detention dted 13.7.1998, Annexure "A" to the writ petition passed by the Police Commissioner, Ahmedabad City, is illegal. He has,

therefore, prayed that the said order be quashed and he may be released from illegal detention forthwith.

The grounds of detention indicate that one case under Bombay Prohibition Act, was registered against the petitioner. In this incident 192 bottles of foreign liquor and 99 bottles of beer worth Rs.34,000/- were recovered from him. In addition to this, two confidential witnesses gave statements against the petitioner and from the aforesaid material the Detaining Authority was subjectively satisfied that the petitioner is a bootlegger within the meaning of Section 2(b) of the Prevention of Antisocial Activities Act, and as such, the impugned order of detention was passed under Section 2(b) of the Prevention of Antisocial Activities Act, 1985.

The aforesaid order has been challenged on the sole ground that the activities of the petitioner were not prejudicial for maintenance of public order. The contention implies that subjective satisfaction of the Detaining Authority that the petitioner is a bootlegger is not under challenge. The registration of case under Bombay Prohibition Act and the statements of two confidential witnesses furnished sufficient material to the Detaining Authority to arrive at subjective satisfaction that the petitioner is a bootlegger.

However, the subjective satisfaction of the Detaining Authority that the activities of the petitioner were prejudicial for maintenance of public order cannot be said to be justified. The only case registered under the Bombay Prohibition Act, indicates that huge quantity of foreign liquor and beer was recovered from the petitioner. But there is no such indication that the petitioner indulged in any activity which was actually prejudicial for maintenance of public order. If at all, he created situation well within the limit of law and order for which he was effectively booked under various sections of the Bombay Prohibition Act. Thus, these activities do not furnish any material for reaching subjective satisfaction that the activities of the petitioner were prejudicial for maintenance of public order.

Now remains the statements of two confidential witnesses. They have given the same repeated story, that on one occasion the petitioner asked the witness to keep stock of foreign liquor in his house and upon refusal of the witness the petitioner dragged and beat him at public

place. Other witness again narrated similar stereotype story that the petitioner suspected him to be police informer and upon his suspicion the witness was beaten. Naturally, when persons are beaten for such insignificant grounds some disturbance is likely to be created at the scene of occurrence but such disturbance cannot be said to have travelled beyond the sphere of law and order and entered the domain of activities prejudicial for maintenance of public order. Thus, the statements of these two confidential witnesses do not furnish any material that these incidents actually disturbed the even tempo of the life of the society or the locality. In the absence of activities being prejudicial for maintenance of public order the impugned order of detention could not be passed. It has therefore been rendered illegal. Consequently, it has to be quashed. The writ petition, therefore, succeeds and is hereby allowed. The impugned order of detention dated 13.7.1998 is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt